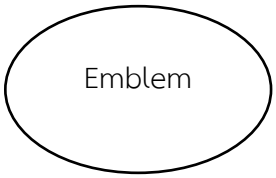
(For translation purpose only, the official language is Thai language)



Emergency Decree

on the Exchange of Information

under International Agreement on Taxation B.E. 2566 (2023)

HIS MAJESTY KING MAHA VAJIRALONGKORN PHRA VAJIRAKLAOCHAOYUHUA

Given on the 29th Day of March B.E. 2566 (2023);

Being the 8th Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Phra Vajiraklaochaoyuhua has graciously commanded to proclaim that:

Whereas it is deemed appropriate to have the law on an exchange of information for implementation of the international agreements on taxation;

This Emergency Decree contains certain provisions regarding the restriction of rights and liberties of individuals, in respect of which section 26 in conjunction with section 32 of the Constitution of the Kingdom of Thailand, authorises its enactment, relying on the virtue of law.

The justification and necessity for the restriction of rights and liberties of individuals under this Emergency Decree are to enable Thailand to comply with obligations and commitments on the exchange of tax information and financial account information in accordance with international agreements on taxation and to ensure tax collection is fair and efficient, which will benefit the country's economy. In this regard, the enactment of this Emergency Decree duly complies with the conditions provided in section 26 of the Constitution of the Kingdom of Thailand;

By virtue of section 172 of the Constitution of the Kingdom of Thailand, an Emergency Decree is hereby enacted as follows:

Section 1. This Emergency Decree is called the "Emergency Decree on Exchange of Information for Implementation of the International Agreements on Taxation, B.E. 2566 (2023)".

Section 2. This Emergency Decree shall come into force as from the day following the date of its publication in the Royal Thai Government Gazette.

Section 3. In this Emergency Decree:

"competent authority" means a competent authority of Thailand or a competent authority of a contracting party as specified in International Agreements on Taxation under Chapter I Exchange of Information on Request or the Agreement under Chapter II Automatic Exchange of Information;

"Director-General" means the Director-General of the Revenue Department;

"Minister" means the Minister having charge under this Emergency Decree.

Section 4. Any orders or any other writing issued by the Director-General to any person in accordance with this Emergency Decree shall be sent by registered mail with acknowledgment of receipt or delivered by hand to the domicile or residence or office of such person during the period from sunrise to sunset or during office hours. If the recipient cannot be found at his or her place of domicile or residence or office, it may be delivered to any person of legal age who resides or works in the house or office appearing to belong to the recipient.

In the case where the delivery cannot be made in accordance with the procedure in paragraph one or that person has left the Kingdom, the order or any other writing, as the case may be, shall be posted at a prominent place of his or her residence, office or house at which his or her name is last registered in the record under the law on civil registration or a brief description thereof shall be published in a newspaper regularly sold in that area or published in public electronic media as prescribed in Ministerial Regulations.

When the procedure prescribed under paragraph one or paragraph two is followed, such order or writing shall be deemed that they have been received.

Section 5. Any orders or any other writing, which the Director-General delivers to any person in accordance with this Emergency Decree or all information, financial accounts, clarifications, documents, or any evidence required to be prepared or submitted by any person to the Director-General in accordance with this Emergency Decree may be made or submitted by electronic processes, subject to the criteria and procedures prescribed in Ministerial Regulations.

The Ministerial Regulation under paragraph one shall prescribe the criteria and procedures in relation to the preparation, delivery, receipt, and retention, which must be in compliance with the criteria under Electronic Transactions Act.

Section 6. The Minister of Finance shall have charge and control of this Emergency Decree and have the power to issue Ministerial Regulations and Notifications for the execution of this Emergency Decree.

Such Ministerial Regulations and Notifications shall come into force upon their publication in the Royal Thai Government Gazette.

CHAPTER I
EXCHANGE OF INFORMATION ON REQUEST

Section 7. In this Chapter:

"International Agreement on Taxation" means:

(1) an Agreement or Convention on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion, entered into by the Thai Government or the Trade and Economic Office of Thailand with a contracting party; or

(2) the Multilateral Convention on Mutual Administrative Assistance in Tax Matters binding on the Thai Government as a party;

"contracting party" means a foreign government entity or a foreign agency which enters into an Agreement or Convention on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with the Thai Government or the Trade and Economic Office of Thailand or which is a party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Section 8. Under International Agreements on Taxation, a competent authority of Thailand shall have the power to exchange information as requested by a competent authority of the contracting party, provided that such exchange of information shall be:

(1) an exchange of information that is specifically relevant and beneficial to tax administration, tax collection, or enforcement of tax laws by the requesting contracting party; and;

(2) an exchange of information that is specifically relevant to a person who is under examination, investigation, prosecution, or enforcement proceedings for taxation by the requesting contracting party, including the information of persons related to such person.

Section 9. A competent authority of any contracting party who wishes to request information under International Agreements on Taxation shall file an application for information with the competent authority of Thailand. The application must contain at least the following subject matters:

(1) Details of the person under examination, investigation, prosecution, or enforcement proceedings for taxation by the requesting contracting party or of persons involved with such person;

(2) The requested information, including the nature and form of information that the requesting contracting party wishes to obtain from the competent authority of Thailand;

(3) The tax purposes for which the information is requested;

(4) The reasons for which it is believed that the requested information is in Thailand or is under the possession or control of a person residing in Thailand;

(5) The name and address of the person believed to have the possession of the requested information;

(6) A statement indicating that such request complies with the laws or administrative practices of the requesting contracting party, that if the information was in the territory of the requesting contracting party, the competent authority of the requesting contracting party would have access to it according to the laws or normal administrative practices in the requesting contracting party, and that the request for information is in conformity with International Agreements on Taxation;

(7) A statement indicating that the requesting contracting party has taken all available measures to the extent it possibly can to obtain such requested information, or that there are measures to successfully obtain the information but, if taken, would result in undue hardship.

Section 10. A competent authority of Thailand shall refuse an exchange of information under this Chapter if any of the following occurs:

(1) The obtainment of the information for exchange purposes under this Chapter will be contrary to the laws or normal administrative practices in Thailand or in the requesting contracting party;

(2) The exchange of information would be contrary to the laws or normal administrative practices in Thailand or in the requesting contracting party;

(3) The exchange of information would result in the disclosure of trade secrets, industrial businesses, commerce, or professional secrets or commercial processes, or the information disclosure would be contrary to public order or morality;

(4) Circumstances make it reasonable to believe that the requesting contracting party will not be able to maintain the confidentiality of the information received;

(5) The competent authority of the requesting contracting party cannot provide information of the same nature available in his or her territory if the competent authority of Thailand requests such information;

(6) The principles of tax collection of the requesting contracting party are contrary to or inconsistent with the generally accepted principles of tax collection or violate the provisions of International Agreements on Taxation;

(7) The requesting contracting party has not taken all available measures to the extent it possibly can to obtain the information under its laws or administrative practices unless such measures cause undue hardship;

(8) The exchange of information pursuant to the request of a contracting party would result in unfair discriminatory treatment against people of Thai nationality.

Section 11. After receiving an application for information under section 9, the competent authority of Thailand shall determine whether the application falls within the rules for exchanging information under section 8, whether the application contains complete details, and whether such details are clear and sufficient to proceed. The competent authority shall also assess whether there is a reason for refusing the exchange of information under section 10 or not.

In the case where the competent authority of Thailand finds that the lists in the application are incomplete or the detail is unclear or insufficient to proceed, the competent authority of Thailand shall notify the competent authority of the requesting contracting party that the lists in application is incomplete or the detail is unclear or insufficient to proceed and notify the competent authority of the requesting contracting party to provide additional information to the competent authority of Thailand within the specified timeframe.

In the case where the competent authority of Thailand considers the application and finds that it does not fall within the rules for exchanging information under section 8 or the competent authority of the requesting contracting party fails to prepare and provide additional information within the specified timeframe under paragraph two without reasonable reason or there is a reason for refusing the exchange of information under section 10, the competent authority of Thailand shall refuse the application and inform the competent authority of the requesting contracting party the reason for the refusal.

Section 12. When the competent authority of Thailand considers the application for information under section 11 and finds that the application falls within the rules for exchanging information under section 8 and contains complete details and the details are clear and sufficient to proceed, as well as there are no grounds for refusing the exchange of information under section 10, the competent authority of Thailand shall proceed to gather the requested information. If there is no such information, the competent authority of Thailand may order the Director-General to undertake measures to obtain the requested information and provide it to the competent authority of Thailand for the purpose of exchanging information as requested.

In carrying out the measures to obtain information as per paragraph one, the Director-General shall have the power to order a person who has possession or control of the information of the person specified in the application to come to give a statement, provide an explanation in writing or gather and submit such information to the Director-General.

CHAPTER II

AUTOMATIC EXCHANGE OF INFORMATION

Section 13. In this Chapter:

"agreement" means the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information;

"contracting party" means a state or a party under the Agreement according to the name list announced by the Minister in the Royal Thai Government Gazette;

"financial account" means a cash deposit account, an asset deposit account, an investment account, or a life insurance policy of the customer of a reporting financial institution;

"reportable person" means a person who has tax residence in the territory of the contracting party or the estate of a deceased person who had tax residence in the territory of the contracting party.

Section 14. Under the Agreement, a competent authority of Thailand shall have the power to automatically exchange reportable financial account information under section 18 with a competent authority of the contracting party. The information to be exchanged with any contracting party must be information related to the reportable person whose tax residence is in the territory of such contracting party.

Section 15. The following persons shall be a reporting financial institution who shall have the duty to report the reportable financial account information to the Director-General:

(1) Financial institutions as defined by the Financial Institution Business Act;

(2) Securities companies as defined by the Securities and Exchange Act;

(3) State-owned financial institutions established by specific laws;

(4) Persons licensed to engage in the life insurance business under the Life Insurance Act;

(5) Derivatives business operators under the Derivatives Act;

(6) Escrow agents under the Escrows Act;

(7) Credit card business operators as stipulated by the Announcement of the Revolutionary Council No. 58, dated 26th January B.E. 2515 (1972);

(8) Trustees under the Trust for Transactions in the Capital Market Act;

(9) Any other persons who have financial account information as prescribed in Notifications issued by the Minister.

The person under paragraph one must have the characteristics, provide the services, or engage in the transactions as prescribed in Ministerial Regulations.

Section 16. The Minister shall have the power to issue Ministerial Regulations prescribing exemption for the reporting financial institutions under section 15 from the reporting duties.

Section 17. A reporting financial institution shall arrange for the customers to notify and confirm their tax residence information every time when a financial account is opened.

The financial accounts that trigger a reporting financial institution to take action under paragraph one shall be the ones that have the characteristics and not be excluded accounts as prescribed in Ministerial Regulations.

Once the customer has made the notification and confirmation under paragraph one, the reporting financial institution shall examine such information, and if it is found that any financial account is held by a customer who is a reportable person or held by a customer whose controlling person is a reportable person, the reporting financial institution shall designate such financial account to be a financial account subject to reporting.

The reportable person under paragraph three shall not include foreign government agencies, international organisations, central banks, and other financial institutions that have the specific characteristics prescribed in Ministerial Regulations and the persons prescribed in Notifications issued by the Minister.

The controlling person means a natural person who exercises control over a customer who is not a natural person. The characteristics of the customer and each type of control over the customer shall be as prescribed in Ministerial Regulations.

The criteria and procedures for Indication of tax residence of a reportable person, the notification and confirmation of information and the examination of information shall be as prescribed in Ministerial Regulations. Such Ministerial Regulation may vary depending on the types or value of financial accounts.

Section 18. When the reporting financial institution has designated a reportable financial account, the information in relation to the reportable financial account and in relation to the reporting financial institution as follows shall be delivered to the Director-General within the 30th of June of the following year for further delivery to the competent authority of Thailand for use for the purpose of automatic exchange of information:

(1) Information about the account owner or a controlling person of the account owner, i.e., name, address, tax identification number, date, month and year of birth, place of birth, or other information as prescribed in Notifications issued by the Director-General;

(2) Information about the financial account, i.e., account number, account balance or policy cash value, interest income, or any other benefit as prescribed in Notifications issued by the Director-General;

(3) Information about the reporting financial institution, i.e., name and identification number of the reporting financial institution as at the end of a calendar year or any other date as prescribed in Notifications issued by the Director-General.

The delivery of the information under paragraph one shall be in accordance with the criteria, procedures, conditions, and formats as prescribed in Notifications issued by the Director-General.

In case of reasonable circumstances, the Minister shall have the power to issue Notifications granting relaxation for the delivery of certain types of information or extending a prescribed period of time for the delivery of such information.

Section 19. After the actions under section 17 have been carried out, if it is discovered that there is a factual error concerning the reporting financial institution's claim that there has been a change to the information causing any financial account to become a reportable financial account or to no longer become a reportable financial account, the reporting financial institution shall have the authority to designate such account to be a reportable financial account or cancel the designation of that account as a reportable financial account, as the case may be.

Section 20. A reporting financial institution shall retain the details and evidence of the procedures carried out in accordance with the provisions of this Chapter and the information collected from the process of financial account examination under this Chapter

for a period of six years from the end of the calendar year in which the process of examining financial accounts is completed.

Section 21. A reporting financial institution may appoint an agent to carry out the actions under section 17, section 18, or section 20, provided that the reporting financial institution shall remain liable if the agent fails to carry out such actions correctly and completely in accordance with section 17, section 18 or section 20, as the case may be.

Section 22. For the benefit of compliance with this Chapter, the Director-General shall have the power to issue orders for a reporting financial institution, a director, a manager, a person with authority of a reporting financial institution or an appointed agent under section 21 to come to give a statement, provide an explanation in writing or submit financial accounts, documents or any evidence relevant to matters subject to investigation.

Section 23. In the event that it appears to the Director-General that:

(1) a reporting financial institution fails to comply with section 17, section 18, or section 32, the Director-General shall have the power to order such reporting financial institution to rectify their actions within the specified timeframe;

(2) If a reporting financial institution complies with section 17, section 18, or section 32, but the reported information is incorrect and incomplete, the Director-General shall have the power to order such reporting financial institution to rectify the information within the specified timeframe.

Section 24. For the benefit of compliance with this Chapter, if it appears to the Director-General that a reporting financial institution, a reportable person, or any other person has undertaken any action with the principal aim to exempt the reporting financial institution or the reportable person from complying with the provisions of this Chapter, the Director-General shall have the power to order the reporting financial institution or the reportable person or any such other person to comply with the provisions of this Chapter.

CHAPTER III

POWERS OF COMPETENT AUTHORITIES

Section 25. Under International Agreements on Taxation under Chapter I Exchange of Information on Request or the Agreement under Chapter II Automatic Exchange of Information, a competent authority of Thailand shall have the power to disclose information obtained under this Emergency Decree or information obtained from competent authorities of the contracting parties to assessment officials under the Revenue Code or Petroleum Income Tax Act or other tax laws as prescribed in Ministerial Regulations.

CHAPTER IV

PENALTY PROVISIONS

Section 26. If any person fails to comply with the Director-General's order under section 12, paragraph two, without reasonable cause, the Director-General shall have the power to consider issuing an order to impose an administrative fine not exceeding two hundred thousand baht.

Section 27. If any person fails to comply with the Director-General's order under section 23 or section 24 without reasonable cause, the Director-General shall have the power to consider issuing an order to impose an administrative fine not exceeding two hundred thousand baht.

Section 28. Any person who intentionally makes a false statement or conceals any fact in the course of taking any action or providing information under section 12, section 17, or section 18 shall be liable to a fine of fifty thousand to five hundred thousand baht.

Section 29. Any reporting financial institution who fails to comply with section 20 shall be liable to a fine not exceeding three hundred thousand baht.

Section 30. Any person who knows information by reason of his or her compliance with this Emergency Decree and discloses such information to other persons, except for disclosure made according to the duties and powers under this Emergency Decree, shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred thousand baht or to both imprisonment and a fine.

Section 31. With regard to the offences under section 28 and section 29, the Director-General shall have the power to settle it, according to the criteria prescribed by the Minister.

When the Director-General has conducted the settlement, and the alleged offender has paid the fine as determined by the Director-General and within the specified timeframe, it shall be deemed that the case is terminated in accordance with the Criminal Procedure Code.

If the alleged offender does not agree to the settlement or agrees to it but fails to pay the fine within the specified timeframe, the case shall proceed.

TRANSITORY PROVISIONS

Section 32. For the benefit of the automatic exchange of information under Chapter II Automatic Exchange of Information, when this Emergency Decree comes into force, a reporting financial institution under section 15 shall examine the financial accounts of its customers available to it prior to the date on which this Emergency Decree comes into force and if it is found that any financial account is held by a customer who is a reportable person or held by a customer whose controlling person is a reportable person, the reporting financial institution shall designate such financial account to be a reportable financial account under Chapter II Automatic Exchange of Information.

Criteria and procedures for the examination of financial accounts under paragraph one and the period of time for the delivery of information shall be as prescribed in Ministerial Regulations. Such Ministerial Regulation may vary depending on the types or value of financial accounts.

The provisions in relation to financial accounts, persons subject to reporting, controlling persons, and consideration of tax residence of reportable persons under section 17 and the provisions of section 21, section 22, section 23, and section 24, including the penalty provisions concerned, shall apply to the implementation of this section.

Section 33. The provisions of section 17, section 18 and section 32 shall not be enforced impose penalties or in any manner that would causes a negative impact on reporting financial institutions until the Ministerial Regulations or Notifications prescribed under those sections come into force.

Countersigned by:
General Prayut Chan-o-cha
Prime Minister

Remarks: The reason for the promulgation of this Emergency Decree is that Thailand is obliged to comply with International Agreements on the Exchange of Tax Information on Request According to the Agreements or Conventions on the Avoidance of Double Taxation and the Prevention of Tax Evasion and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and has to undertake its obligations on automatic exchange of financial account information according to the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information and that Thailand is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, which is a cooperation framework for the exchange of tax information of the Organisation for Economic Cooperation and Development (OECD), and therefore, Thailand has to proceed to exchange tax information on request and automatically exchange financial account information with the members of such agreements within September 2566 B.E. (2023). These actions are new and operationally complex, requiring reporting financial institutions, to be provided with time to examine and prepare financial account information in their possession and supervision for exchange purposes. If financial institutions in Thailand are unable to exchange information within the specified timeframe, Thailand will be classified as a non-cooperative jurisdiction for tax purposes by the European Union and OECD group of countries, Thailand's key trading partners. This could significantly and unavoidably impact economic security of the country. Therefore, the government submitted a bill on such a matter to the House of Representatives, and the committee members finished the consideration. However, as a session of the House of Representatives has earlier been prorogued, such a bill is pending consideration by the House of Representatives. If an Emergency Decree is not enacted, there will be no legal framework requiring compliance with those obligations. This situation constitutes an emergency that necessitates urgent action to preserve the country's economic security. Thus, the promulgation of this Emergency Decree is deemed necessary.